Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

No. 75-223

COMMONWEALTH OF PENNSYLVANIA,
Petitioner

v.

EDDIE JACKSON & RONALD GARRETT,
Respondents

RESPONDENTS' REPLY IN OPPOSITION TO ALLOWANCE OF A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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ARGUMENT

In this case the District Attorney for Cumberland County, Pennsylvania claims that certiorari ought be granted to review the judgment of the Pennsylvania Supreme Court suppressing the evidence in the within case, for the following three reasons:

First, he claims that the case presents the Supreme Court an opportunity to *"correct"* a Pennsylvania Supreme Court decision interpreting the sufficiency of averments supporting the issuance of a search warrant in a State case; and to redefine the Pennsylvania rule bearing on the "staleness" and "remoteness" of information purporting to establish probable cause for the issuance of search warrants in that state.

Secondly, he claims that the Pennsylvania decision somehow ought to be the vehicle for the renunciation of the *Aguilar v. Texas*, 378 U.S. 108 and *Spinelli v. United States*, 393 U.S. 410 decisions of the Court; and

Third, he claims that the exclusionary rule, announced by the Pennsylvania Supreme Court as being controlling in Pennsylvania Criminal Cases, ought not be applied in the within case.

The within case should hardly serve as the vehicle for such drastic judicial surgery.

First of all, Pennsylvania clearly has a right to announce what it conceives to be its own rules in respect to affidavits for search warrants.

In its opinion, on pp. 28, 29 of the appendix to the petition for certiorari, the Pennsylvania Supreme Court said, of "stale information,"

> "The requisite probable cause must exist at the time the warrant is issued and be based on facts which are closely related in time to the date of the issuance, for it is well-settled that stale information cannot supply the probable cause necessary for the issuance of a search warrant. Sgro v. United States, 287 U.S. 206, 210 . . . ; Commonwealth v. Simmons, 450 Pa. 624, 629-630 . . . ; Commonwealth v. Shaw, 444 Pa. 110, 113.
>
> Instantly, the only information contained in the affidavit relating to the possible presence of narcotics or other controlled substances in the trunk of the Ford Automobile, dated from January 21, 1972, almost five months prior to the issuance of the search warrant. As this Court noted in Commonwealth v. Shaw, supra at 113-114:
>
> 'If the issuing officer is presented with evidence of criminal activity at some prior time, this will not support a finding of probable cause as of the date the warrant issues, *unless it is also shown that the criminal activity continued up to or about that time.*' (Emphasis supplied.)
>
> Here, as in Shaw, the requirement of establishing continuing criminal activity has not been satisfied. See also Commonwealth v. Simmons, supra."

That is Pennsylvania's view of the law.

Surely, *Ker v. California*, 374 U.S. 23, 10 L. Ed. 2d 726, 83 S. Ct. 1623, is not to be over-ruled to the extent

that it grants the States the sole right to adopt their own rules relative to arrest and search. Note language from p. 31 of 374 U.S., and p. 736 of 10 L. Ed. 2d, where we read:

> "Mapp . . . established no assumption by this court of supervisory authority over state courts. Cf. Cleary v. Bolger, 371 U.S. 392 . . . , and, consequently, it implied no total obliteration of state laws relating to arrests and searches in favor of federal law. Mapp sounded no death knell for our federalism; . . ."

And, on p. 34 of 374 U.S., and p. 738 of 10 L. Ed. 2d, we read further:

> "The States are not thereby precluded from developing workable rules governing arrests, searches and seizures to meet 'the practical demands of effective criminal investigation and law enforcement' in the States. . . ."

And, on p. 37 of 374 U.S., p. 740 of 10 L. Ed. 2d, we read:

> "A fortiori, the lawfulness of these arrests by state officers for state offenses is to be determined by (State) law."

The respondents hardly think that the United States Supreme Court can find any basis in this decision for over-ruling the above sound principles of law.

Secondly, nothing in the Pennsylvania decision requires over-turning *Aguilar* or *Spinelli*. The case of *United States v. Harris*, 403 U.S. 573, 29 L. Ed. 2d 723, 91 S. Ct. 2075, clearly mandates a denial of relief to the petitioner.

Argument

Harris stands for the fundamental proposition that, before averments of unidentified informants, inserted in affidavits for search warrants, be credited, there be shown, on the face of the affidavits, *"substantial basis"* for crediting the hearsay. Cf. p. 581 of 403 U.S., and 732 of 29 L. Ed. 2d.

In the within case, the only averment in the affidavit supporting the search warrant, and relating to the respondent, EDDIE JACKSON, and his being an alleged "large scale dope dealer in Detroit as of January 21, 1972," was derived, the affiant claimed, "from a reliable confidential informant". (See p. 7 of the Petition for Certiorari.)

Not a word in that affidavit affords any "substantial", or other, basis for crediting this hearsay. The affidavit contains this bare statement that the information derived from a reliable confidential informant; but there is nothing contained in the affidavit for believing the information was reliable.

The affidavit does not say that the information derived from the Detroit Police Department; but that it derived from a "reliable confidential informant".

Certainly, the Supreme Court is not going to announce a rule less stringent than that announced in *U. S. v. Harris,* supra. And the suggestion that the Supreme Court find some meritorious basis for granting certiorari, under these circumstances, is simply ludicrous.

Additionally, the actual testimony of Trooper Wynn, taken on the suppression hearing, established that he didn't even know who it was in the Detroit Police Department who furnished him the information regarding a confidential informant.

Argument

Finally, it is absurd to suggest that the Supreme Court of the United States ought to dictate to Pennsylvania as to whether it should or should not apply the exclusionary rule to cases arising solely under its own laws.

That is precisely what the Court in *Ker v. California,* supra, said the Federal Government would not do. Admissibility in State cases is to be determined by the States and not the Federal Government; and the Federal Government cannot interfere in the judicial processes of Pennsylvania.

Accordingly, the petition for certiorari, filed by the District Attorney for Cumberland County, Pennsylvania ought to be quickly denied.

Respectfully submitted,

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